

**MEMORANDUM OF UNDERSTANDING BETWEEN THE OFFICE OF THE
DIRECTOR OF PUBLIC PROSECUTIONS AND THE QUEENSLAND
POLICE SERVICE**

Respecting the communications between the Office of the Director of Public Prosecutions (ODPP) and the Queensland Police Service (QPS) in sexual offence prosecutions.

PREAMBLE

Whereas:

- Both the ODPP and the QPS recognise and respect each others independence and responsibilities;
- Both the ODPP and the QPS recognise that the QPS retains responsibility for decisions relating to the investigation and charging of criminal offences;
- Both the ODPP and the QPS recognise that when the ODPP is responsible for the prosecution of a matter the ODPP has primary responsibility for decisions relating to that prosecution;
- Both the ODPP and the QPS recognise the need for effective communications to ensure that they can carry out their individual responsibilities;
- Both the ODPP and the QPS recognise that effective communications will be enhanced by clearly setting out, in this Memorandum, the manner in which communications between the ODPP and the QPS will be carried out;

the Director of Public Prosecutions and the Commissioner agree as follows:

1. This Memorandum is intended to complement the existing Guidelines issued by the Director of Public Prosecutions under s. 11 of the *Director of Public Prosecutions Act 1984* ('the Director's Guidelines') and the QPS Operational Procedures Manual ('OPM').
2. The purpose of this Memorandum is to provide a clear understanding of how the ODPP and the QPS should communicate with each other and with other parties involved in the criminal investigation and prosecution of sexual offences.
3. This Memorandum contains a basic communication framework that can be supplemented by local arrangements that reflect local practices so long as the arrangements are consistent with the Director's Guidelines and the QPS OPM.
4. This Memorandum shall commence on the date of signing by the parties and continue until it is terminated hereunder.
5. Both parties agree that the execution of this Memorandum terminates the Memorandum of Understanding 'Respecting the communications between the Office of the Director of Public Prosecutions and the Queensland Police Service in

sexual offence prosecutions' entered into by the parties in July 2005. Termination is effective as from the date of commencement of this Memorandum.

6. Both parties will jointly review this Memorandum at intervals of not more than twelve (12) months to ensure that the overall objectives are being achieved.
7. Notwithstanding other provisions of this Memorandum, either the Commissioner or the Director of Public Prosecutions may by written notice to the other party, terminate this Memorandum.

Advice to Police:

8. Advice to police is confined to that prescribed by Guideline 25 of the Director's Guidelines.

Contact between QPS and ODPP:

9. This Memorandum does not intend to designate methods of communication and consultation between the QPS and ODPP. The development of methods adapted to local circumstances will best meet the needs of the QPS, the ODPP and victims of crime.
10. When the ODPP is responsible for the prosecution of a matter, the QPS will provide the ODPP with the contact details (including email address) of the investigating officer. The ODPP will keep these details confidential and utilise them only for purposes related to the prosecution of criminal offences.
11. When the ODPP is responsible for the prosecution of a matter, the ODPP will provide the QPS investigating officer with the contact details (including email address) of the ODPP legal officer and the officer's supervisor (in the event the officer is unavailable) and, (where available), Crown prosecutor or other counsel briefed to prosecute a matter. These details are not to be released to any other person without the prior consent of the relevant ODPP legal officer, ODPP supervisor, Crown prosecutor or counsel.
12. The ODPP will provide to the investigating officer, wherever reasonably practicable, updates on the progress of the prosecution and significant decisions made in respect of the prosecution. These updates, except for urgent matters, can be sent by email. Examples of such updates include:
 - the fact of the presentation of an indictment;
 - bail matters (including conditions);
 - sentence and trial dates;
 - amendments or changes to charges that will significantly affect the penalty likely to be imposed; and
 - result of prosecution.
13. The QPS, will provide to the ODPP, on request, a written report on witness availability. Such written advice can be forwarded to the ODPP legal officer.

14. When making requests for additional investigative steps or further evidence the ODPP, whenever reasonably practicable, will reduce these requests to writing. If it is not reasonably practicable to reduce the request to writing (for example, because of the urgency of the matter) the request may be verbal followed by a confirmatory email at a later time.
15. When the investigating officer receives a request for additional investigative steps there will be a substantive response to the ODPP within four weeks of receipt of request. However, if the matter is urgent the ODPP legal officer or Crown prosecutor may request a response in a designated time.
16. If a substantive response cannot be given by the investigating officer within four weeks (for example, because of the need to wait for particular evidence) the investigating officer will notify the ODPP in writing within 10 days of the delay and the reason for any delay.
17. An 'urgent matter' includes a prosecution to proceed by way of ex-officio indictment. In the case of ex-officio indictments an investigating officer has 14 days to deliver that material unless a reasonable explanation for non-delivery within that timeframe is provided. If such explanation is not provided, consent to the matter proceeding by way of an ex officio indictment must be withdrawn.

The QPS and ODPP Seeking Justice Committee

18. The QPS and ODPP have established the *QPS and ODPP Seeking Justice Committee* (Committee) which meets in Brisbane on a regular basis.
19. The Committee's responsibilities include:
 - to monitor the progress of the QPS and the ODPP in implementing those outstanding recommendations from the Crime and Misconduct Commission's (CMC's) 'Seeking Justice' report (June 2003) that require a joint response (as per recommendation 1 of the CMC's 'Follow-up Seeking Justice' report (March 2008));
 - to discuss and resolve practice problems, failings, barriers, suggestions for improvement and best practice issues that have come to light during the investigation and prosecution of sexual offence matters (as per recommendation 9 of the CMC's 2003 report);
 - to overview the work that is done by the QPS and ODPP Failed Sexual Offence Prosecutions Working Party and to respond to the systemic issues identified in the Working Party's reports (as per recommendation 10 of the CMC's 2003 report);
 - to monitor compliance with this Memorandum; and
 - to resolve disputes about a failure to comply with either the Director's Guidelines or a failure to comply with this Memorandum.
20. Where either an ODPP or QPS officer is concerned that there has been a failure to follow the Director's Guidelines or this Memorandum every effort will be made to resolve the issues raised at the local level.

21. However, if resolution is not possible at this level, then the issue will be referred to the Committee.

Review of failed sexual offence prosecutions

22. The QPS and ODPP have established the *QPS and ODPP Failed Sexual Offence Prosecutions Working Party* (Working Party) which meets in Brisbane.

23. The Working Party's responsibilities include:

- to gather information about failed sexual offence prosecutions (including information from the ODPP);
- to discuss failed sexual offence prosecutions;
- to identify systemic issues that need to be addressed by the QPS and/or the ODPP; and
- to provide the QPS and ODPP Seeking Justice Committee with written reports that contain:
 - an analysis of all failed sexual offence prosecutions for that period; and
 - recommendations for changes to prevent future failed prosecutions (if appropriate) and to enhance service delivery in both the QPS and the ODPP.

Discontinuance of/substantially reducing charges:

24. The exercise of the prosecutorial discretion to discontinue, or substantially reduce charges, is governed by the Director's Guidelines.

25. Director's Guideline 20 requires that a legal officer or a Crown prosecutor consult with an investigating officer when the ODPP is considering discontinuing a prosecution or substantially reducing a charge.

26. Director's Guidelines 21 and 24 require that a legal officer or Crown prosecutor must also seek the views of any victim whenever serious consideration is given to discontinuing a prosecution for a violent or sexual offence.

27. The ODPP will advise investigating officers in writing of the reasons why a prosecution is discontinued or charges are substantially reduced as soon as reasonably practicable and appropriate after the decision to discontinue or reduce is made.

28. A document containing the written reasons for discontinuing or reducing a charge remains a confidential document of the ODPP and cannot be copied or disclosed to any person (other than a QPS officer or staff member) without the consent of the Director of Public Prosecutions.

29. Ordinarily, the agency making the decision to discontinue a prosecution or substantially reduce a charge will contact the victim to give reasons for discontinuance/reduction when a decision is made.

30. However, the ODPP and QPS recognise that there may be a rare and exceptional case where the ODPP decides that the appropriate person to advise the victim of the reasons for the discontinuance/reduction in charge is the investigating officer. In these cases the ODPP will provide to the investigating officer written reasons for the discontinuance/reduction in charge for the investigating officer to provide to the victim.

31. In those circumstances where the ODPP are to advise the victim of the reasons for the discontinuance/reduction in charge, the investigating officer should ordinarily be advised of the reasons before the victim is advised, unless this is not reasonably practicable.

IN WITNESS WHEREOF the parties have executed this Memorandum of Understanding on the dates indicated below:

SIGNED:
A. W. MOYNIHAN S. C.
DIRECTOR OF PUBLIC PROSECUTIONS
DATE: / /2011

SIGNED:
R. ATKINSON
COMMISSIONER OF THE QUEENSLAND POLICE SERVICE
DATE: / /2011